

### DAMAGE TO A VESSEL OF THE NAVY BY COLLISION WITH A REVENUE-CUTTER VESSEL.

The appropriation for construction and repair of vessels of the Navy is exclusively applicable to repairs of such vessels, and reimbursement of that appropriation by a transfer from the appropriation for expenses of the Revenue-Cutter Service for the cost of repairing the damage done to such a vessel by a vessel of the Revenue-Cutter Service is not authorized.

*(Comptroller Tracecell to the Secretary of the Treasury, July 26, 1899.)*

By your reference of the 19th instant you request to be informed whether the decision in 1 Comp. Dec., 261, applies to the case transmitted by you. In this case it appears that the United States steamer *Alliance* was damaged while at anchor in Hampton Roads, Virginia, June 9, 1899, by being fouled by the training ship *Chase* of the Revenue-Cutter Service, while attempting to tack across her bows. The cost of repairing this damage is stated to amount to \$185.41, and the Secretary of the Navy requests that this amount be placed to the credit of the appropriation "Construction and repair, 1900." This credit can only be given by a transfer from some other appropriation, presumably from the appropriation for expenses of the Revenue-Cutter Service.

In the decision referred to the Comptroller held that the head of an Executive Department is not authorized to pay the actual expenses of repairing a vessel injured in a collision with a Government vessel, the claim arising from the collision being one for unliquidated damages caused by the tort of the Government's officers.

But in the present case there is no question of the payment of a claim against the United States. The claim, in so far as the matter may be considered as a claim, is merely by one branch of the Government against another. But the real question in this case is simply a question as to the appropriation which is properly applicable to the repair of the injured vessel. As the injured vessel is a vessel of the Navy, I think there can be no doubt that the proper appropriation for the Navy is applicable thereto. It seems equally clear that the appropriation for expenses of the Revenue-Cutter Service, which is applicable to repairs of revenue vessels only, is not applicable to repairs of vessels of the Navy.

The fact that the damage to the vessel of the Navy was caused by a revenue vessel does not appear to be material. The appropriation for construction and repairs of vessels of the Navy is applicable to the repair of such vessels without regard to the origin of the injury necessitating the repairs, whether arising from natural deterioration or wear and tear, or from an accident of any kind, whether by the fault of the officers of the Navy or others or otherwise.

### RENT OF A BUILDING FOR THE DEPARTMENT OF JUSTICE.

The appropriation for the erection of a new building for the Department of Justice upon the ground occupied in part by the existing building is construed to provide for the rent of a building for the use of that Department while the new building is being erected, within the meaning of the act of March 3, 1877, which provides that no contract shall be made for the rent, for the use of the Government, of any building in the District of Columbia, "until an appropriation therefor shall have been made in terms."

*(Decision by Comptroller Tracecell, July 26, 1899.)*

The Auditor for the State and other Departments, under date of the 25th instant, submits for approval, disapproval, or modification the following decision, which involves an original construction of the following act of Congress:

"Whereas the building now occupied by the Department of Justice is too small for its purpose, is unsafe, overcrowded, and dangerously overloaded, and has been so pronounced, after examination by the proper officials of the Treasury Department: Therefore,

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a fireproof building shall be erected for the accommodation and use of the Department of Justice upon the ground belonging to the Government at the corner of Pennsylvania avenue and Madison place (Fifteen-and-a-half street northwest), in the city of Washington, District of Columbia, part of which is covered by the building now occupied by the Department; and the construction of said building shall be in charge of the Attorney-General, who shall be authorized and directed to select and adopt plans for the said building and to make contracts for its construction and for the removal of the old building, after proper advertisement and the reception of plans and bids, and to pay to the persons submitting the two sets of

plans next in order of merit to those selected such sums as, in his judgment, shall be proper compensation for their preparation; and for the purpose of carrying out the provisions of this act and completing and furnishing the said building the sum of one million dollars is hereby appropriated, out of any money in the Treasury not otherwise appropriated; and the money appropriated for said building shall be expended under the direction of the Attorney-General.

"SEC. 2. That said building shall be constructed so as to provide a court room and necessary accommodations for the Court of Claims. In the mean time the Attorney-General is authorized to hire temporary quarters for the use of said court, and to remove said court and its records and archives thereto; and the sum of twenty-five thousand dollars is hereby appropriated for that purpose, to remain available until expended.

"SEC. 3. That the Attorney-General shall annually report to Congress at the commencement of each session a detailed statement of all the proceedings made under the provisions of this act.

"SEC. 4. The limit of cost of said building is one million of dollars, and no plan therefor shall be accepted or construction thereof entered upon that will involve an expenditure exceeding the limit of cost fixed herein." (Act of March 3, 1899, 30 Stat., 1358.)

The decision reads:

"There is before this office for settlement an account of W. E. Schneider for \$833.33, rental for the month of June, 1899, of the 'Hotel Baltic,' 1435 K street northwest, Washington, D. C., for the use of the Department of Justice, under a lease dated May 1, 1899, for a term commencing June 1, 1899, and continuing to December 1, 1900, at the yearly rent of \$10,000. The account bears the approval of the Attorney-General, and payment is requested by him from the appropriation for 'Building, Department of Justice' (30 Stat., 1358, act of March 3, 1899).

"The following laws are involved in the consideration of this account.

"No Department of the Government shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriation." (Sec. 3679, Rev. Stat.)

"No contract or purchase on behalf of the United States shall be made unless the same is authorized by law, or is under an appropriation adequate to its fulfillment, except in the War and Navy Department, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year." (Sec. 3732, Rev. Stat.)

"\* \* \* No contract shall be made for the rent of any building, or part of any building, to be used for the purposes

of the Government, in the District of Columbia, until an appropriation therefor shall have been made in terms by Congress, and that this clause be regarded as notice to all contractors or lessors of any such building or any part of building." (Act of March 3, 1877, 19 Stat., 370.)

"Section 1 of the act of March 3, 1899, *supra*, providing for the erection of a building for the Department of Justice, appropriates the sum of one million dollars for the purpose of carrying out the provisions of the act and completing and furnishing the said building.

"This appropriation specifically provides for the construction of a new building, the removal of the old building, and for compensation to persons submitting certain plans next in order of merit to those selected.

"Section 2 of the said act makes a further appropriation of twenty-five thousand dollars for the purpose of providing temporary quarters for the use of the Court of Claims and removing said court and its records and archives thereto. The act is silent as to any purpose to provide temporary quarters for the accommodation and use of the Department of Justice pending the erection of the new building, nor is there any other appropriation against which the rental of such temporary quarters can be charged.

"For report and debate in H. R. on bill providing for a public building for the Department of Justice, see Congressional Record, Fifty-fifth Congress, third session, March 2, 1899, p. 2943 (bound volume at p. 2764).

"Therefore, under the provisions of law above cited, and more especially of the act of March 3, 1877, *supra*, payment of the account is unauthorized by law, there being no appropriation 'in terms' by Congress for the payment of the rent under consideration."

The act also contains a preamble reciting that the building now occupied by the Department of Justice is too small for its purpose, is unsafe, overcrowded, and dangerously overloaded, and then proceeds to enact that a building shall be erected for the accommodation and use of the Department upon ground belonging to the Government, including that covered by the building now occupied by the Department; that the construction of said building shall be in charge of the Attorney-General. The act further provides as follows:

"And for the purpose of carrying out the provisions of this act and completing and furnishing the said building, the sum of one million dollars is hereby appropriated, \* \* \* and the money appropriated for said building shall be expended under the direction of the Attorney-General."

It will be observed that the purpose of the act was to guard against the danger occasioned by the unsafe, overcrowded, and

overloaded condition of the old building. The act specifically directed that the new building should cover the ground upon which the old building stood. It therefore was a necessary implication that the old building should be torn down and removed, because a new building could not be erected without the destruction of the old, and this required, necessarily, that the employees, records, and archives of the Department should be removed to some other place. Such removal required expenditure for the mere operation of transfer. It also required a place in which the files, archives, etc., should be kept and preserved until they could be returned to the new building. It also necessarily implied that there should be some other place in which the business of the Department could be carried on in connection with its files and archives. It can hardly be supposed that Congress meant to suspend the operations of the Department of Justice pending the destruction of the old building and the erection of a new one. Such an interpretation of the statute would be absurd. The act appropriated \$1,000,000 for carrying out the provisions of the act, and the provisions of the act were for the erection of a new building to take the place of an unsafe, overcrowded, and overloaded one.

Whenever power is given by statute, everything necessary to make it effectual or requisite to attain the end is implied. It is a well-established principle that statutes containing grants of power are to be construed so as to include the authority to do all things necessary to accomplish the object of the grant. The grant of an express power carries with it by necessary implication every other power necessary and proper to the execution of the power expressly granted. Where the law commands anything to be done, it authorizes the performance of whatever may be necessary for executing its demands. (Sutherland on Statutory Construction, section 341; Opinion of Attorney-General Devens, 15 Op. Att. Gen., 212.)

I do not think the act of March 3, 1877, is at all in conflict with this view. That act provided that no contract for the renting of a building in the District of Columbia shall be made until an appropriation therefor shall have been made in terms by Congress. In this case an appropriation has been made, as I contend, in terms which cover this contingency. The act of 1877 does not require that the terms of the lease, or any other particular terms, shall be designated, but only that an appropriation shall have been made in terms. This statute will well

be fulfilled by any appropriation for a purpose which necessarily implies renting a building. The other statutes cited by the Auditor in his decision do not seem to have the slightest pertinency to the question in hand and call for no comment whatever.

Moreover, one Congress can not derogate from the authority of its successors by making irrevocable laws, or by providing that its act shall be repealed in any particular method or by any particular language. (Black on Interpretation of Laws, 109.)

In a case in Wisconsin it appeared that the charter of a city declared that none of its provisions should be considered as repealed by any general law construing them unless the purpose to repeal them should be expressly set forth in such law. It was held, nevertheless, that the charter might be repealed by implication by a general law.

If it could, by any possibility, be held that the act providing for the tearing down of the building used by the Department of Justice and the erection of a new building on the site thereof, which necessarily implies the removal of such Department during the intervening time, is in conflict with the act of March 3, 1877, the latter act, by all fair rules of construction, would work the *pro tanto* repeal of the former act.

Attention is also called by the Auditor to the report of the chairman of the committee who reported the bill providing for the tearing down of the old and the erection of the new building. It contains a tentative statement by the Attorney-General that he could occupy the old building while a wing of the proposed new building was being erected, and on its completion move the Department into such completed wing.

It is understood as being generally agreed, both by the English and American courts, that reports or recommendations made to legislative bodies by their respective committees in relation to pending measures can not be accepted as pertinent evidence of the meaning which the legislature intended to attach to the statute. (Black on Interpretation of Laws, 226.)

I am forced to the conclusion that Congress did not intend by the act in question to make it inoperative for the want of power to use the appropriation therein contained for a purpose absolutely necessary to its fulfillment.

The decision of the Auditor is consequently disapproved.